

UNITED STATES DISTRICT COURT
DISTRICT OF NEW MEXICO

ISAAC LEGARETTA, ANTHONY
ZOCCOLI and JOHN or JANE DOES
1-20,

Plaintiffs,

vs.

Case No.: 2:21-cv-00179-JHR-GBW

FERNANDO MACIAS, Dona Ana County
Manager, DIRECTOR BRYAN BAKER, an
Official with the Dona Ana County Detention
Center, CAPTAIN BEN MENDOZA, an official
the Dona Ana County Detention Center, Captain
JOSHUA FLEMING, an official with the Dona Ana
County Detention Center,
COUNTY OF DONA ANA and JOHN or JANE
DOES 1-20,

Defendants.

MOTION TO STRIKE

COME NOW Plaintiffs and move the Court to strike or to disregard the supplemental filings of Defendants. IN SUPPORT IT IS STATED:

1. Rule 15 of the FRCP states at section (d):

SUPPLEMENTAL PLEADINGS. On motion and reasonable notice, the court may, on just terms, permit a party to serve a supplemental pleading setting out any transaction, occurrence, or event that happened after the date of the pleading to be supplemented. The court may permit supplementation even though the original pleading is defective in stating a claim or defense. The court may order that the opposing party plead to the supplemental pleading within a specified time.

2. Defendants have filed not one but two supplements to their Motion to Dismiss, in addition to a Reply Brief. They did not seek concurrence from Plaintiffs or permission from the Court. In so doing, the Defendants have prevented the Plaintiffs from making arguments pertaining to the relevance or meaning of the supplemental authorities they have added to their

Motion.

3. Supplemental filings like the ones complained of apart from violating FRCP 15 are treated with short shrift by courts when asked to strike them. *Driggers v. U.S.*, Civil Action No. 3:11-CV-0229-N (N.D. Tex. Oct. 26, 2011); *Miller v. KFC Corporation*, Civil Action No. 3:99-CV-1566-D (N.D. Tex. May 24, 2001); *Decatur Ventures v. Stapleton Ventures, Inc.* (S.D.Ind. 2005), No. 1:04-cv-0562-JDT-WTL (S.D. Ind. Jan. 13, 2005)

4. Consent was not sought from Defendants' counsel due to the nature of this Motion.

WHEREFORE, the Plaintiffs respectfully request that the Court:

1. Strike the supplemental filings of Defendants;
2. If the Court denies the above request to strike, permit the Plaintiffs to file a surreply that addresses not only the supplemental filings, but also the reply brief filed by Defendants.

Respectfully submitted,

/s/ Jonathan Diener

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CERTIFICATE OF SERVICE

I hereby certify that on August 4, 2021, I filed the foregoing via the CM/ECF filing system, which caused all counsel of record to be served by electronic means.

/s/ Jonathan Diener

Jonathan Diener